Supreme Court, U.S.
FILED

No. 03-338 SEP 2 2003

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In The

Supreme Court of the United States

JOHN CARL MESE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

After *Salinas v. United States*, 522 U.S. 52 (1997), must a defendant agree that someone will commit two predicate acts of racketeering in order to be guilty of RICO conspiracy, as is required in the United States Court of Appeals for the Seventh Circuit or is there no such requirement as has been held in the opinion of the Florida court below and by the United States Court of Appeals for the Eleventh Circuit?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the court whose judgment is sought to be reviewed were as in the caption.

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PETITION FOR WRIT OF CERTIORARI

Petitioner prays for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Third District, in this case.

OPINIONS BELOW

The Opinion of the District Court of Appeal of Florida, Third District ("Third District") affirming the judgment of conviction of the Circuit Court for the Eleventh Judicial Circuit of Florida, is reprinted in the appendix at App. 1 and reported at *Mese v. State*, 824 So.2d 908 (Fla. 3d DCA 2002). The unpublished Judgment of Acquittal of the Eleventh Judicial Circuit in and for Dade County, Florida, finding Petitioner not guilty of the offenses of RICO conspiracy, RICO, first degree murder, kidnaping, attempted extortion, and conspiracy to commit a first degree felony notwithstanding the verdict is reprinted in the appendix at App. 26. The Order of the Supreme Court of Florida denying the Petitioner's Petition for Review is reprinted in the appendix at App. 28 and is reported at *Mese v. State*, 847 So.2d 977 (Fla. 2003). The unpublished Order of the District Court of Appeal of Florida, Third District, denying Petitioner's Motion for Rehearing, Motion for Rehearing En Banc and Motion for Certification of Question of Great Public Interest is reprinted in the appendix at App. 29.

JURISDICTION

The judgment of the Third District was entered on July 19, 2002 and Petitioner's petition for review to the

Supreme Court of Florida was denied on June 3, 2003. (App. 28.) This petition for a writ of certiorari is filed within ninety days of the Supreme Court of Florida's order denying the petition for review, in compliance with Rule 13 of this Court's rules. The Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATUTES INVOLVED

18 U.S.C. § 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1961(5) provides:

> "[P]attern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

18 U.S.C. § 1962(d) provides:

> It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

§ 895.03(3), Fla. Stat., provides:

> It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

§ 895.02(4), Fla. Stat., provides:

> "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

§ 895.03(4), Fla. Stat., provides:

> It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

STATEMENT OF THE CASE

Petitioner, along with co-defendants, Daniel Lugo and Noel Doorbal, was charged in a 46-count indictment. On the face of the indictment, Petitioner was joined with Lugo and Doorbal based on an umbrella charge of conspiracy to violate RICO. Petitioner was charged with the following crimes: conspiracy to commit RICO; RICO; two counts of first degree murder – one for Frank Griga and one for

Krisztina Furton; two counts of kidnaping – one for Griga and one for Furton; attempted first degree murder of Marcelo Schiller; kidnaping of Schiller; armed robbery of Schiller; extortion of Schiller; nine counts of money laundering of nine checks involving the Schiller incident; one count each of forging, falsely notarizing and uttering a Schiller quit claim deed; one count each of forging, falsely notarizing and uttering a Schiller change of beneficiary form; 12 counts of forging, falsely notarizing and uttering four identical sets of a Schiller assignment of contract; and conspiracy to commit a felony – later described as a conspiracy to kidnap Winston Lee. App. 1-2.

The substantive and conspiracy RICO counts alleged three predicate racketeering incidents as constituting the required "pattern of racketeering activity" supporting the RICO charges. The three charged predicate racketeering incidents were (1) the crimes of murder, kidnaping, robbery and extortion concerning a Hungarian couple, Frank Griga and Krisztina Furton (referred to in the indictment as "Racketeering Incident A" and herein as the "Griga/Furton Racketeering Incident"), (2) the crimes of kidnaping, robbery and extortion concerning Marcelo Schiller (referred to in the indictment as "Racketeering Incident B" and herein as the "Schiller Racketeering Incident"), and (3) a conspiracy to kidnap an individual named Winston Lee (referred to in the indictment as "Racketeering Incident C" and herein as the "Lee Racketeering Incident"). Petitioner was not charged with participating in Racketeering Incident C involving Winston Lee. Thus, Petitioner was only charged with participating in ***two*** racketeering incidents: the Griga/Furton Racketeering Incident and the Schiller Racketeering Incident. (R. 140).

Prior to trial, Petitioner filed motions to sever his case from that of both co-defendants. In these motions, he alleged that the Griga/Furton and Schiller racketeering incidents were two separate incidents without any pre-organizational planning. In addition, he alleged that there was no evidence that he agreed to the crimes encompassing the Griga/Furton Racketeering Incident or the Lee Racketeering Incident and, since a defendant must agree that someone will commit at least two racketeering incidents to be guilty of RICO conspiracy under § 895.03(4), Fla. Stat., he was innocent of the RICO conspiracy count upon which joinder was predicated. (R. 621-625, 803-807, 861-862).[1] The trial court denied Petitioner's motions for severance. (Str. 1021-1051, 1053, 1063-1069, 1117, 1180; Tr. 80, 118-119, 139).

At trial, the government presented no iota of proof that Petitioner agreed to the Griga/Furton Racketeering Incident or the Lee Racketeering Incident. There was no evidence at trial that Petitioner was involved in the plan to kidnap Lee. Indeed, only three witnesses testified briefly about the conspiracy to kidnap Lee and none of them testified that Petitioner had anything to do with that conspiracy. (Tr. 8056-8076, 8933-8935, 9551, 9553). There was no evidence at trial that Petitioner was involved in the crimes of murder, kidnaping, robbery and extortion that were committed against Griga and Furton. Indeed,

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[1] The symbol "R." refers to the documentary portion of the record on appeal. The symbol "Tr." refers to the transcript portion of the record on appeal. The symbol "Str." refers to additional transcripts in the supplemental record on appeal.

there was a total lack of evidence that Petitioner agreed that someone would commit these crimes. (App. 19).

With respect to the crimes against Schiller, the State proved, at best, that Petitioner, an accountant, improperly notarized documents and acted so as to aid the laundering of Schiller's assets which were obtained during the kidnaping and extortion of Schiller. There was no evidence that Petitioner was personally involved in the kidnaping, robbery, extortion and attempted murder of Schiller. Notably, it was undisputed at trial that the Schiller crimes occurred four months before the Griga/Furton crimes. There was no evidence at trial that any two people discussed the commission of more than one racketeering incident prior to the conclusion of the Schiller Racketeering Incident.

The jury found Petitioner guilty as charged on all counts. Subsequently, Petitioner filed a motion to set aside the jury verdict as to the substantive and conspiracy RICO counts, the counts involving the crimes against Griga and Furton and the count charging the conspiracy to kidnap Lee. The trial court granted the motion and acquitted Petitioner of all crimes related to the Griga/Furton and Lee Racketeering Incidents ("Racketeering Incidents A and C"), including the substantive and conspiracy RICO charges and the Lee conspiracy. That also included an acquittal of every substantive crime involving Griga and Furton, including the two first-degree murder charges. As a result, Petitioner stood convicted for only those charged crimes emanating from the Schiller incident. ("Racketeering Incident B"). He was sentenced to 56 years. (App. 3, 26).

In acquitting Petitioner on the RICO conspiracy count, the trial court noted that it was aware that the RICO conspiracy statute, § 895.03(4), Fla. Stat., did not require that Petitioner personally commit at least two predicate acts. (Tr. 11728). However, the trial court correctly pointed out that the RICO conspiracy statute requires that a defendant agree that someone commit at least two predicate acts. (Tr. 11729-30). The trial court ruled that the State had not produced competent evidence that Petitioner had agreed that someone would commit the crimes against Griga and Furton ("Racketeering Incident A"). (Tr. 11735). The trial court further ruled that there was "no evidence" that Petitioner had agreed that someone would commit the crimes against Winston Lee ("Racketeering Incident C"). (Tr. 11724, 11736). Because the RICO conspiracy statute requires that a defendant agree that someone will commit ***two*** racketeering acts, and there was insufficient evidence that Petitioner had agreed that someone would commit Racketeering Incidents A and C involving Griga/Furton and Winston Lee respectively, the trial court acquitted Petitioner on the RICO conspiracy count. (Tr. 11729-30, 11737; App. 5-6, 26).

On appeal, Petitioner argued, ***inter alia***, that the trial court erred in denying his motions for severance of his trial from that of his two co-defendants because the trial court had correctly acquitted him of RICO conspiracy on the basis that he had not agreed that someone would commit two predicate racketeering incidents, and, since joinder of the defendants had only been predicated upon Petitioner and his co-defendants all being charged with RICO conspiracy, joinder was improper. *See* Petitioner's Initial Brief on Appeal to the Third District dated March 21, 2001 at 33-45. The State did not cross-appeal the trial

court's acquittal of Petitioner on the substantive RICO charges or any of the crimes involving Griga/Furton or Winston Lee. The State could not challenge the trial court's acquittal of Petitioner on the substantive RICO charges since such charges require that a defendant participate in at least two predicate acts, and the evidence at the trial below failed to establish that Petitioner had participated in the predicate acts. (App. 4). The State argued that the trial court erred in acquitting Petitioner of the RICO conspiracy count and, since joinder of the defendants was predicated upon that count, joinder was proper. (App. 5). In a cross-appeal, the State challenged only the trial court's acquittal of Petitioner on the RICO conspiracy.

The State maintained in its cross-appeal that, after *Salinas v. United States*, 522 U.S. 52 (1997), a defendant need not have agreed that someone would commit two predicate acts of racketeering in order to be convicted of RICO conspiracy. The State pointed out that *Salinas* was controlling because, although *Salinas* involved the construction of the federal RICO statute, 18 U.S.C. §§ 1961(5), 1962(c) and (d), the Florida RICO Act, § 895.01 *et seq.*, Fla. Stat., is patterned after the federal RICO statute so Florida courts rely on federal courts for assistance in construing the RICO statute.[2] The State claimed that, after *Salinas*, in order for a defendant to be convicted of RICO conspiracy, a defendant need only adopt the goal of facilitating the criminal endeavor and need not enter into an agreement that someone in the conspiracy will commit at least two of the charged predicate acts of racketeering. The State asserted that Petitioner laundered assets and

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[2] *See Gross v. State*, 765 So.2d 39 (Fla. 2000).

money for those involved in the RICO conspiracy and knew their objective was to illegally obtain large amounts of money so, under the State's interpretation of *Salinas*, Petitioner could properly be convicted of RICO conspiracy without having entered into an agreement that someone would commit at least two of the charged predicate acts of racketeering. *See* State's Brief on Appeal to the Third District dated August 1, 2001 at 37-42; State's Reply Brief on Appeal to the Third District dated November 15, 2001 at 4-7. The Petitioner contended that this construction of *Salinas* by the State was incorrect so the trial court's acquittal of Petitioner on the RICO conspiracy count was proper. *See* Petitioner's Reply/Cross-Appeal Brief on Appeal to the Third District dated November 6, 2001 at 9-19.

The Third District, in a split opinion, agreed with the State's interpretation of *Salinas* and, therefore, held that the trial court erred in acquitting Petitioner of RICO conspiracy notwithstanding the jury verdict. In so holding, the Third District noted as follows:

> Florida's RICO statute, section 895.03(3), Florida Statutes (1993), makes it "unlawful for any person employed by, or associated with any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt." A pattern of racketeering activity is defined by statute as:
>
> > [E]ngaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the

> effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

See § 895.02(4), Fla. Stat. (1993).

Given the fact that the Florida RICO statute is patterned after the federal RICO statute,* Florida courts look to federal courts for guidance in construing RICO provisions. *See Gross*, 765 So.2d at 42.[3]

In *Salinas v. United States*, 552 U.S. 52 (1997), the United States Supreme Court specifically found that a RICO conspirator need not commit or agree to commit two predicate acts himself:

> It makes no difference that the substantive offense under § 1962(c) requires two or more predicate acts. The interplay between subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense.

See id. at 65.

The court noted that the federal RICO conspiracy statute, § 1962(d), broadened conspiracy coverage by omitting the requirement of an overt act; it did not, at the same time, work the radical

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[3] Florida's RICO conspiracy statute, § 895.03(4), Fla. Stat., makes it unlawful for any person to conspire to violate Florida's RICO statute, § 895.03(3). Similarly, the federal RICO conspiracy statute, 18 U.S.C. § 1962(d), makes it unlawful for any person to conspire to violate the federal RICO statute, 18 U.S.C. § 1962(c).

change of requiring the Government to prove that each conspirator agreed that he would be the one to commit two predicate acts. *Id.* at 64. The RICO conspirator, according to the court, must:

> intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion. One can be a conspirator by agreeing to facilitate only some of the acts leading to the substantive offense. It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself.

Id.

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* The federal RICO statute provides, inter alia, that:

> [i]t shall be unlawful for any person employed by or associated with any enterprise engaged in ... interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprises affairs through a pattern of racketeering activity or collection of unlawful debts.

See 18 U.S.C. 1962(c) (1994).

A pattern of racketeering activity is defined as requiring:

> requiring [sic] at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the omission of a prior act of racketeering activity.

See 18 U.S.C. 1961(5) (1994).

(App. 6-8).

The Third District further noted that, in construing the federal RICO conspiracy statute, this Court in *Salinas* stated that, "[i]f conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators." (App. 12). The Third District construed all of the above-quoted language in *Salinas* to mean that Petitioner could properly be convicted of RICO conspiracy even if he did not agree that someone would commit at least two of the predicate racketeering incidents charged in the indictment. The Third District expressly stated that "Mese was not personally involved in the kidnaping, abduction and/or murder of the Hungarian couple (the Griga/Furton Racketeering Incident)." (App. 12). The dissenting opinion of the Third District noted that, "[a]s to Griga and Furton, there is a total lack of evidence that Mese knew anything about the plan to kidnap them" and the Third District's majority opinion cited no such evidence. (App. 19). Petitioner was not charged with participating in the Lee Racketeering Incident. Therefore, despite the fact that Petitioner did not agree that someone would commit at least two of the three charged racketeering incidents, the Third District held that Petitioner was guilty of RICO conspiracy merely because "[t]he evidence shows that Mese agreed to make himself available to launder the ill-gotten gains from the underlying predicate acts of the co-conspirators," although he did not agree that someone would commit at least two of those underlying predicate acts. (App. 12).

After the Third District reversed the trial court's acquittal of Petitioner on the RICO conspiracy count, the Petitioner timely filed a motion for rehearing, rehearing en banc and certification of a question of great public

importance. This motion was denied. (App. 29). Thereafter, Petitioner timely petitioned the Supreme Court of Florida for review of the question of whether a defendant must agree that someone will commit at least two incidents of racketeering activity before he can be convicted of RICO conspiracy. (Petitioner's Brief on Jurisdiction at 1-7). This Petition for Review was denied. (App. 28).

REASONS FOR GRANTING THE PETITION

Certiorari should be granted to determine whether, after *Salinas v. United States*, 522 U.S. 52 (1997), a defendant must agree that someone will commit two predicate acts of racketeering in order to be guilty of RICO conspiracy as is required in the United States Court of Appeals for the Seventh Circuit or whether there is no such requirement as has been held in the opinion of the Florida court below and by the United States Court of Appeals for the Eleventh Circuit.

In *Salinas v. United States*, 522 U.S. 52 (1997), this Court was called upon to resolve a split in the circuits concerning the definition of the federal RICO conspiracy statute, 18 U.S.C. § 1962(d). As this Court noted in *Salinas*, some courts defined the "agreement" at the heart of RICO conspiracy as requiring the United States to prove that each alleged conspirator ***personally*** agreed to commit two or more predicate acts, while other courts held that it was enough that the government prove that each RICO conspirator merely agreed that two or more such acts ***would be committed by someone*** in the conspiracy. This Court resolved this controversy by rejecting the "personal commission" rule. In doing so, however, this

Court accepted the proposition that the RICO "agreement" still necessarily required proof that each RICO conspirator agreed that ***at least two*** of the charged racketeering acts would be committed by someone in the conspiracy. Thus, this Court held that, although each conspirator need not agree to personally "undertake all of the acts necessary for the crime's completion," each conspirator must nonetheless "intend to further an endeavor which, if completed, would satisfy ***all of the elements of a substantive criminal offense***." *Salinas*, 522 U.S. at 65 (emphasis added).

This Court recognized in *Salinas* that one of the essential elements of a substantive federal RICO offense is the commission of at least two racketeering acts. *Id.* at 62. This Court upheld Salinas' RICO conspiracy conviction because it found that co-conspirator Marmolejo had "committed at least two acts of racketeering" and that Salinas "knew about and agreed to facilitate the scheme." *Id.* at 66. Thus, the evidence showed that Salinas agreed to Marmolejo's commission of at least two racketeering acts and, therefore, satisfied the definition of RICO conspiracy followed by a majority of the circuit courts. Under this Court's analysis in *Salinas*, while RICO conspiracy does not require "the Government to prove that each conspirator agree that ***he would be the one*** to commit two predicate acts," the government still had to prove that each conspirator agreed that ***someone*** – *i.e.*, a co-conspirator such as Marmolejo – would commit at least two predicate acts. *Id.* at 65 (emphasis added). Accordingly, *Salinas* should not be interpreted to hold that a defendant can be convicted of RICO conspiracy without agreeing that someone will commit two predicate acts of racketeering.

However, the Third District below erroneously interpreted this Court's discussion in *Salinas* about the scope of the federal RICO conspiracy statute to mean that a defendant can be convicted of RICO conspiracy without having agreed that someone would commit two of the charged predicate acts of racketeering. Recently, in *United States v. Harriston*, 329 F.3d 779 (11th Cir. 2003), the United States Court of Appeals for the Eleventh Circuit likewise held that, after *Salinas*, a defendant need not agree that someone will commit two of the charged predicate acts of racketeering in order to be convicted of RICO conspiracy.

However, the United States Court of Appeals for the Seventh Circuit, in *Goren v. New Vision Intern., Inc.*, 156 F.3d 721, 723 (7th Cir. 1998), interpreted *Salinas* and held that, in the wake of that decision, a RICO conspiracy still requires "(1) that each defendant agreed to maintain an interest in or control of an enterprise or to participate in the affairs of an enterprise through a pattern of racketeering activity and (2) ***each defendant further agreed that someone would commit at least two predicate acts to accomplish those goals.***" (Emphasis added). This holding of *Goren* is well-established law in the Seventh Circuit. *E.g. Lachmund v. ADM Investors Services, Inc.*, 191 F.3d 777, 784 (7th Cir. 1999); *Slaney v. Int'l Amateur Athletic Federation*, 244 F.3d 580, 600 (7th Cir.), *cert. denied*, 534 U.S. 828 (2001). In addition, the Court in *Seidl v. Greentree Mortgage Co.*, 30 F.Supp.2d 1292, 1306 (D. Colo. 1998), followed the *Goren* Court's interpretation of *Salinas* and held that a RICO conspiracy requires that a defendant "agree[ ] that someone would commit at least two predicate acts. . . . "

The Petitioner contends that the Seventh Circuit has adopted the better interpretation of *Salinas* because, as described above, this Court in *Salinas* merely addressed whether a defendant must have agreed to ***personally*** commit two predicate acts in order to be convicted of a RICO conspiracy and answered that question in the negative. This Court, however, did not go so far as to hold that a defendant can be convicted of RICO conspiracy without agreeing that someone will commit two predicate acts of racketeering.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2002

JOHN CARL MESE, Appellant, vs. THE STATE OF FLORIDA, Appellee.	** ** ** ** ** ** **	CASE NO. 3D98-2410 & 99-921 LOWER TRIBUNAL NO. 95-17381

Opinion filed June 19, 2002.

An appeal from the Circuit Court for Miami-Dade County, Alex E. Ferrer, Judge.

Dunlap and Silvers, P.A. and Marcia J. Silvers; Arthur Joel Berger, for appellant.

Robert A. Butterworth, Attorney General and Michael J. Neimand, Assistant Attorney General, for appellee.

Before GREEN, SHEVIN, and RAMIREZ, JJ.

GREEN, J.

I

John Carl Mese, along with co-defendants, Daniel Lugo and Noel Doorbal were charged in a forty-six count indictment. Mese was charged with the following crimes:

conspiracy to commit RICO, RICO; two counts of first degree murder – one for Frank Griga and one for Krisztina Furton; two counts of kidnaping – one for Griga and one for Furton; one count of attempted extortion of either Griga or Furton; attempted first degree murder of Marcelo Schiller; kidnaping of Schiller; armed robbery of Schiller; extortion of Schiller; nine counts of money laundering of nine checks involving the Schiller incident; one count each of forging, falsely notarizing and uttering a Schiller quit claim deed; one count each of forging, falsely notarizing and uttering a Schiller change of beneficiary form; twelve counts of forging, falsely notarizing and uttering four identical sets of a Schiller assignment of contract; and conspiracy to commit a felony – later defined as a conspiracy to kidnap Winston Lee.

Prior to trial, Mese filed motions to sever his case from that of both co-defendants on the grounds that the Schiller and Griga/Furton crimes were separate and that there was no evidence that he had participated in the Griga/Furton crimes with his co-defendants. In response, the state asserted that there was evidence that Mese was part of an ongoing criminal conspiracy whose objective was to kidnap and torture wealthy victims until they turned over their assets and then to kill them. Mese, an accountant, allegedly had the specific role of laundering the victim's assets once the co-conspirators acquired them. The trial court denied Mese's motions for severance.

The state announced that it would seek the death penalty against Lugo and Doorbal, but not against Mese. The trial court conducted one trial using two juries after the state informed the court that it would seek to introduce a statement from Lugo which implicated Doorbal and some statements from Doorbal and Mese which implicated

Lugo. One jury would hear the case against Mese and Doorbal. The other jury would hear the case against Lugo. The two juries would sit together during the entire guilt phase of the trial, separating only to hear testimony from witnesses to whom the post-arrest incriminating statements were made.

Both at the close of the state's case in chief and at the close of all the evidence, Mese moved for a judgment of acquittal on the counts of Rico conspiracy, Rico, and those counts involving Griga/Furton and the Lee conspiracy. The state responded that the evidence against Mese on the Rico conspiracy count was sufficient for the jury's consideration as it established that Mese participated in the Schiller crimes, and there was testimony that Mese's role in the criminal organization was to launder monies secured from all crimes by the co-defendants. The trial court reserved ruling and submitted the case to the jury.

The jury returned its verdict finding Mese guilty as charged on all counts. Following the return of the verdict, Mese filed his motion to set aside the jury verdict as to all of the RICO counts, the Griga/Furton counts and the Lee count. The trial court granted the motion and acquitted Mese of all crimes involving Rico, Griga/Furton, and Lee. As a result, Mese stood convicted for only those crimes emanating from the Schiller incident. He was sentenced to fifty-six years.[1]

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[1] His co-defendants, Lugo and Doorbal, were convicted and the two juries returned verdicts recommending a death sentence for each. Their respective appeals are now pending before the Supreme Court of Florida.

Mese has timely perfected the instant appeal and argues that he is entitled to a new trial based upon three errors. First, he maintains that the trial court erred in denying his three motions for severance of his trial from that of his two co-defendants pursuant to Florida Rules of Criminal Procedure 3.152(b)(3). Next, Mese asserts that the trial court erred when it permitted the state's forensic accountant to testify that Mese was guilty of money laundering. Finally, he argues that he is entitled to a new trial because the prosecutor used the trial judge to vouch for the credibility of the state's main witness during closing argument. The state has filed a cross-appeal and argues that the trial court erred in granting Mese's motion to set aside the jury verdict finding Mese guilty of RICO conspiracy.[2]

II

On the main appeal, Mese first contends that the trial court erred in denying his repeated motions for severance of his trial from that of his co-defendants pursuant to Florida Rules of Criminal Procedure 3.152(b)(3)[3] on the

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[2] The state has not challenged the trial court's acquittal of Mese on the substantive RICO charges since such charges require that a defendant participate in at least two predicate acts, and the evidence at the trial below failed to establish that Mese had participated in the predicate acts.

[3] That rule provides that:

In cases in which at the close of the state's case or at the close of all the evidence, the evidence is not sufficient to support a finding that allegations on which the joinder of a defendant is based have been proved, the court shall, on motion of that defendant, grant a severance unless the court finds that severance is unnecessary to achieve a fair determination of that defendant's guilt or innocence.

grounds, among other things, that there was a gross disparity in the quantum of evidence to be introduced against him and that to be introduced against his co-defendants, Lugo and Doorbal. Moreover, he argued that there was a prejudicial evidentiary spillover in a joint trial where the state was seeking the death penalty against his co-defendants and where there was no evidence that he had been involved with the planning or killing of Griga and Furton, or in the destruction and disposal of their bodies. Mese points out that he stands convicted only of the substantive crimes involving victim Schiller and that the counts on which he was acquitted by the trial court included the RICO conspiracy count upon which joinder had been predicated.

By way of a cross-appeal, the state responds to Mese's first argument by asserting that joinder of the defendants was proper and that the trial court erred in granting Mese's motion to set aside his guilty RICO conspiracy verdict. The state maintains that the evidence adduced at trial was sufficient to establish that Mese's presence in the criminal organization was to launder the assets of all of its victims. Since Mese's first argument on the main appeal depends upon the propriety of his acquittal on the RICO conspiracy count by the trial court, we elect to address the state's cross-appeal first.

III

The trial court ordered Mese's acquittal on the RICO conspiracy charges on the ground that the evidence had failed to establish Mese's knowledge of and agreement to commit two predicate acts. The trial court believed that the evidence only established Mese's knowledge and

culpability in the criminal incidents involving victim Schiller and not those involving victims Griga and Furton or Lee. The state responds that this was error since RICO conspiracy is proven if the evidence established that a defendant knew of the overall objectives of the criminal enterprise and agreed to further its purpose. Here, the state maintains that the evidence and the reasonable inferences therefrom showed that Mese, along with co-defendants Lugo and Doorbal, and Jorge Delgado were members of an association or organization whose common purpose was to launder money and other assets obtained from innocent wealthy victims by illegal and malicious means. The state further asserts that since the evidence established that Mese's role in the organization was his *agreement* to launder the assets of the victims, it was sufficient to support the RICO conspiracy guilty verdict, even though Mese may not have known of every detail of the Griga/Furton crimes nor committed an overt act in furtherance of the Griga/Furton crimes. After viewing the evidence and the reasonable inferences therefrom in the light most favorable to the state, *see Gross v. State*, 765 So. 2d 39, 46 (Fla. 2000), we agree that the state presented sufficient evidence at trial to support Mese's conviction for RICO conspiracy.

Florida's RICO statute, section 895.03(3), Florida Statutes (1993), makes it "unlawful for any person employed by, or associated with any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt." A pattern of racketeering activity is defined by statute as:

> [E]ngaging in at least two incidents of racketeering conduct that have the same or similar

> intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

See § 895.02(4), Fla. Stat. (1993).

Given the fact that the Florida RICO statute is patterned after the federal RICO statute,[4] Florida courts look to federal courts for guidance in construing RICO provisions. *See Gross,* 765 So. 2d at 42.

In *Salinas v. United States,* 522 U.S. 52 (1997), the United States Supreme Court specifically found that a RICO conspirator need not commit or agree to commit two predicate acts himself:

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[4] The federal RICO statute provides, inter alia, that:

> [i]t shall be unlawful for any person employed by or associated with any enterprise engaged in . . . interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprises affairs through a pattern of racketeering activity or collection of unlawful debts.

See 18 U.S.C. 1962(c) (1994).

A pattern of racketeering activity is defined as requiring:

> requiring at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the omission of a prior act of racketeering activity.

See 18 U.S.C. 1961(5) (1994).

> It makes no difference that the substantive offense under § 1962(c) requires two or more predicate acts. The interplay between subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense.

See Id. at 65.

The court noted that the federal RICO conspiracy statute, § 1962(d), broadened conspiracy coverage by omitting the requirement of an overt act; it did not, at the same time, work the radical change of requiring the Government to prove that each conspirator agreed that he would be the one to commit two predicate acts. *Id.* at 64. The RICO conspirator, according to the court, must:

> intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion. One can be a conspirator by agreeing to facilitate only some of the acts leading to the substantive offense. It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself.

Id.

Our view of the evidence in the instant case, in a light most favorable to the state, leads us to conclude that it was sufficient to establish Mese's agreement to the overall objective of the conspiracy which was to kidnap wealthy victims, force them to sign over their assets and have those assets laundered through Mese. Beginning with the first incident involving victim Schiller, the state established that the conspirators, other than Mese, kidnaped and held Schiller for approximately one month. During this time, Schiller was tortured and forced to, among other things, sign over checks, a deed to real property and a change of insurance beneficiary form against his will. Mese's role was then to fraudulently change the property deeds and notarize all of the documents to make them appear legal and launder all the money from this criminal undertaking.

To establish Mese's complicity in the continuing RICO conspiracy, the state relied primarily upon the testimony of Delgado, one of the conspirators who testified on the state's behalf. According to Delgado, the second target of the conspiracy was to be a Jamaican businessman named Winston Lee. That plan was thwarted, however, due to Lee's travel schedule. Delgado testified that he then learned from Doorbal that a wealthy Hungarian couple, Frank Griga/Krisztina Furton would be the next targets of the conspiracy. According to Delgado, the plan for these victims would be the same as for Schiller. That is, they would be kidnaped and forced to sign over all of their assets to the conspirators. The documents would thereafter be notarized by Mese, who would then launder their

money in and out of the country.[5] Griga and Furton, however, were abducted and murdered prior to their signing over their assets. Despite their murders, Delgado testified that the plan remained to acquire the couple's

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[5] Delgado testified as follows:

Q. Now, prior to this time, had you found out who was supposed to take care of the money that was supposed to be received from the Hungarian couple?

A. Lugo

Q. Was he gonna have any help?

A. Well, he told me he was gonna take care of it through Mese going to the Bahamas and by flying over there and doing the account from over there. He was gonna bring back the money.

* * *

Q. And besides Lugo telling you that Mr. Mese would launder the money that came in from the Hungarians, through these offshore corporations, that – did Mr. Mese have anything to do with the planning or the abduction or the murders of the Hungarians?

A. No.

Q. And what Lugo was saying was that he expected Mr. Mese to assist him in laundering the money? Isn't that right?

A. Yes.

Q. But, he never told you, meaning Lugo never told you that he had specifically discussed with Mese that this is what we are going to do and we expect you to help us launder this money? Isn't that correct?

A. What's correct is that he had told me that he would help in anything to do with transfer of the money.

Q. You are saying that conversation occurred between you and Lugo?

A. Between me and Lugo, yes.

* * *

assets.[6] According to Delgado, the plan was to file a fraudulent lawsuit against Griga in the Bahamas and any monies derived from that lawsuit would then be channeled through a corporation owned by Lugo and Mese.[7]

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[6] Q. Was this still the plan to try and get the money?

A. Yes.

Q. Despite the fact that the Hungarian couple was dead?

A. Yes.

Q. That was continued to be discussed?

A. Yes.

Q. And Mese's name was continued to be discussed?

A. Yeah.

* * *

[7] Q. And did you also say that there was going to be some type of a lawsuit filed against Mr. Griga?

A. Yes.

Q. Now was that in the Bahamas or was that going to be in the United States?

A. In the Bahamas.

Q. And were you going to retain the Bahamian counsel to file this lawsuit?

A. Mr. Lugo was trying to retain that counsel.

Q. Was it the same lawyer, do you know who formed a Elite International?

A. It wasn't the same lawyer.

Q. And when Mr. Lugo was going to talk to an attorney in the Bahamas about doing this he certainly wasn't going to tell the attorney that this was a false lawsuit, was he?

A. Correct?

Q. And Mr. Mese had nothing to do with the selection of that Bahamian attorney, either did he?

A. Not that I am aware of.

(Continued on following page)

Given this evidence of Mese's support by laundering money, the fact that Mese was not personally involved in the kidnaping, abduction and/or murder of the Hungarian couple does not thereby exculpate him from the conspiracy. *See Salinas,* 522 U.S. at 64 ("If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators"). Nor is Mese exculpated by the fact that he never had the opportunity to launder any of the assets belonging to Griga/Furton – the crime of conspiracy is punishable whether or not the substantive crime ensues. *Id.* The evidence shows that Mese agreed to make himself available to launder the ill-gotten gains from the underlying predicate acts of the co-conspirators.

Apart from Delgado's testimony about Mese's role in the Griga/Furton incident, the state also adduced testimony from a wrestling promoter named Howard Brody who met with Mese at or around the time of the Griga/Furton crimes. Brody was seeking an investor and, according to Brody, Mese stated that he and a man named

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Q. And any monies that were going to be derived from that lawsuit were going to go through Elite International, your corporation, weren't they?

A. No they weren't.

Q. Where were they going to go through?

A. To D & J.

Q. D & J International?

A. Yes.

Q. Mr. Lugo's corporation.

A. And Mr. Mese.

* * *

Danny were interested in investing some money, but "they were waiting on a deal to close or something that was in the process of being done." Brody further testified that later something happened and Mese's partner, Danny, was no longer around to invest so the deal never came to fruition.

Brody's testimony was presented as circumstantial evidence of Mese's knowledge of the plan to extort money from Griga/Furton in furtherance of the RICO conspiracy. The state may rely upon circumstantial evidence to establish "that each defendant must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity." *See United States v. Castro,* 89 F.3d 1443, 1451 (11th Cir. 1996) (citations omitted).

Thus, in viewing the foregoing evidence in a light most favorable to the state, we conclude that a jury could have reasonably found that one common agreement on a single overall objective existed between Mese and the co-defendants. *See Id.* at 1451. In proving that Mese was a part of this RICO conspiracy, it was not necessary for the state to establish that he agreed with every other conspirator, knew of his fellow conspirators, was aware of all of the details of the conspiracy, or even contemplated participating in the same related crime. *Id.* Accordingly, the trial court erred in granting Mese's motion to set aside his guilty verdict on the RICO conspiracy counts.

IV

In light of our conclusion that the evidence was sufficient to support Mese's conviction for RICO conspiracy, we find no merit to Mese's initial argument on the

main appeal that the trial court erred in denying his repeated motions for a severance of his trial from that of his two co-defendants Lugo and Doorbal. From the face of the indictment, it is clear that Mese was joined with the two co-defendants pursuant to Florida Rule of Criminal Procedure Rule 3.150(b)(2). That rule provides that:

> Two or more defendants may be charged in the same indictment or information on which they are to be tried when:
>
> (2) each defendant is charged with conspiracy and some of the defendants are also charged with 1 or more offenses alleged to have been committed in furtherance of the conspiracy.

Count one of the indictment charged each defendant with conspiracy to commit RICO. Mese contends that he was entitled to a severance pursuant to Florida Rule of Criminal Procedure 3.152(b)(3).[8] That rule, however, would only have permitted a severance in this case if the evidence was insufficient to establish Mese's guilt for RICO conspiracy. Since we have found the evidence to be sufficient to support Mese's guilty verdict for RICO conspiracy, the trial court's denial of his severance motions cannot be deemed to be an abuse of discretion. *See Fotopoulos v. State,* 608 So. 2d 784, 790 (Fla. 1992)' *Crossley v. State,* 596 So. 2d 447 (Fla. 1992); *Wright v. State,* 739 So. 2d 1230, 1232 (Fla. 1st DCA 1999).

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[8] *See* Rule, supra, footnote 3.

V

Mese next asserts that the trial court erred in permitting the state's expert forensic accountant to offer his opinion during both direct and cross-examination about whether Mese's various transfers of Schiller's funds from one account to another was done in an effort to conceal the source of those funds. Mese maintains that such opinion testimony on the ultimate issue of whether he was guilty of money laundering was inadmissible. *See Martinez v. State,* 761 So. 2d 1074 (Fla. 2000). In reviewing the record, however, we note during those various occasions on direct examination where the expert offered his opinion in this regard, there was either no objection or an inadequate objection interposed by defense counsel. Therefore, this issue was not properly preserved for our appellate review. *See Moore v. State,* 418 So. 2d 435 (Fla. 3d DCA 1982); *United States v. Fox,* 613 F.2d 99 (5th Cir. 1980) (if proper objection not interposed at the time the evidence is presented, the appellant will be deemed to have waived objection). Further, when the expert offered his opinion during cross-examination, it was in response to questioning posed by Mese's counsel. Consequently, any error occurring at this time was invited. *Sheffield v. Superior Ins. Co.,* 800 So. 2d 197 (Fla. 2001) (under the invited-error doctrine, "a party may not make or invite error at trial and then take advantage of the error on appeal").

VI

As his final point on appeal, Mese asserts that he is entitled to a new trial on the RICO conspiracy charge based upon a prosecutorial comment made during closing argument that improperly led the jury to believe that the

trial judge was vouching for Delgado's credibility. Specifically, the argument of which Mese now complains occurred during the following underscored argument by the state:

> And you know that deal, I know defense is gonna say he made that deal before he gave that sworn statement. No, he didn't. He did not. The deal is when the judge accepts the deal. The judge accepted the deal on March 22nd. He gave his statement on March 20th. Between that he was debriefed. That's what its called cops talk to him day and night, went over evidence, made sure that they knew what he was talking about, that he wasn't lying to them and then the deal was struck. *Whatever piece of paper he had with me, that's nothing because it's the judge that imposes the sentence. And don't let anybody tell you its something else. I suggested the deal to the judge. The judge had to be assured that what we were doing was what George wanted to do and that he gave sworn testimony that was truthful.* And that's what happened on March 22nd. Nothing had happened before that holds George to fifteen years. Absolutely nothing. It wasn't until March 22nd after he gave his statement, that he knew he was gonna get fifteen if he told the truth.
>
> And why in a sworn statement? So George Delgado in the three years that he waited or the two years that he waited, didn't decide to sit on this stand and help his friends. So that I had something to go back to the court with and say, uh-uh, judge, he lied, and he gets forty now. That's not gonna happen. George Delgado gets his fifteen years.

In reading the challenged comments by the prosecutor in context with the remainder of the arguments outlined above, we do not agree with Mese that the state was attempting to convince the jury that the trial court was vouching for Delgado's credibility. Rather, it is clear to us that the prosecutor was attempting to outline the complete nature of Delgado's plea arrangement with the state, which was entirely proper. *See Rogowski v. State,* 643 So.2d 1144 (Fla. 3d DCA 1994).

VII

In conclusion, for the foregoing reasons, we reverse the order setting aside the appellant's guilty verdicts for RICO conspiracy and remand for his sentencing on those counts. We affirm his conviction and sentences on the remaining counts.

Reverse and remanded in part with directions. Affirmed in part.

SHEVIN, J., concurs.

John Carl Mese v. The State of Florida,
Case Nos: 3D98-2410 & 3D99-921

RAMIREZ, J., (dissenting).

I respectfully dissent because the evidence was insuff. ent to show that Mese knew of any plans to kidnap Lee, Furton, and Griga or that he agreed to any acts beyond laundering Schiller's assets. I would therefore affirm the trial court's order setting aside the verdict as to the conspiracy count, and grant Mese a new trial.

1. The Conspiracy as to Griga and Furton

I agree with the majority that Mese can be guilty of conspiracy "by agreeing to facilitate only some of the acts leading to the substantive offense." *Salinas v. United States,* 522 U.S. 52, 65 (1997). "The government may either prove (1) that a defendant agreed to the overall objective of the conspiracy or (2) that the defendant personally committed two predicate acts, thereby participating in a single objective conspiracy." *United States v. Shenberg,* 89 F.3d 1461, 1471 (11th Cir. 1996). The trial court granted Mese's motion for acquittal on the RICO charges based solely on the fact that the proof did not establish the second prong, to wit: that the defendant had not personally committed two predicate acts. I agree with the majority that this was error because Mese could have been convicted of conspiracy under the first prong. But in my view, the State never proved the first prong either, that Mese agreed to the overall objective of the conspiracy. The State must prove that Mese manifested this agreement. *See United States v. Neapolitan,* 791 F.2d 489, 498 (7th Cir. 1986) (stating that "the defendant must manifest his agreement to the objective of a violation of RICO."). "In reviewing conspiracy convictions, the question is whether there is substantial evidence to support the verdicts." *United States v. Russo,* 796 F.2d 1443, 1455 (11th Cir. 1986). The State in this case failed to prove that Mese agreed to facilitate an overall scheme. In fact, there is no evidence that he even knew what the alleged co-conspirators were doing.

The State contends that the overall objective of the conspiracy was to kidnap wealthy victims in order to coerce them into signing away their assets and that Mese agreed to launder any assets so obtained. Mese may have

agreed to commit notary fraud or launder money, but there is no iota of proof that he knew of or assisted in the kidnaping of anyone.[9] Even as it relates to Schiller, the fact that Mese notarized Schiller's documents does not prove that he knew Schiller had been kidnaped and had signed them under duress. The documents simply could have been forged. As to Griga and Furton, there is a total lack of evidence that Mese knew anything about the plan to kidnap them.

For its proof that Mese was part of the Griga/Furton crimes, the State relies on Delgado's testimony, which is quoted in footnotes 5, 6 and 7 of the majority opinion. This is submitted as proof Mese knew of the plan to kidnap the victims and force them to sign over all their assets. A careful reading of the transcript, however, merely shows that Delgado was told by Lugo that he, Lugo, *expected* Mese to help launder the money. Lugo never told Delgado that Mese had *agreed* to do so. Additionally, the fact that Lugo planned to deposit money from a phony lawsuit into a corporation he and Mese owned does not prove Mese knew that the money originated from a kidnaping. The State also presented the testimony of Howard Brody, a wrestling promoter, as circumstantial evidence that Mese knew Lugo was planning further crimes. Brody testified that in the month prior to the Griga/Furton murders, Mese told him that a potential investor named Danny,

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[9] If someone agrees with two other car thieves to assist them in selling stolen auto parts and the other two thieves murder and kidnap people, is the peddler of stolen auto parts now also guilty of murder and kidnap? By its ruling, the majority would say yes. I do not believe the case law supports that position.

(referring to co-defendant Daniel Lugo), was waiting for a deal to close before money would be available. This is hardly proof that Mese knew of and agreed to further schemes, especially where it is not known precisely when Lugo and Doorbal decided to kidnap Griga and Furton. Lugo could have simply told Mese that he was coming into some money from any type of deal and that is what Mese was referring to when he approached Brody about investing. Thus, the State's proof of conspiracy is based on inconclusive double hearsay and a vague reference to the possibility that Lugo might come into some money from an unspecified source.

2. The Conspiracy as to Schiller

Even as to Schiller, I do not believe that the evidence proves that Mese knew what was happening in the overall scheme to kidnap and coerce the victims to sign over their assets. A review of the evidence of the Schiller crimes is necessary.

Jorge Delgado, the State's star witness, had a business relationship with Marcello Schiller which terminated due to Delgado's association with Daniel Lugo. Lugo then recommended that Delgado hire Mese as his accountant. After Delgado's falling out with Schiller, Lugo convinced Delgado that Schiller had been cheating Delgado and, along with Noel Doorbal, they concocted a scheme to kidnap Schiller and extort the money Schiller purportedly owed Delgado. After several unsuccessful attempts, Schiller was kidnaped on November 15, 1994.

While Schiller was being held hostage, he was brutally tortured to obtain his cooperation. They also threatened Schiller with harm to his wife and children. He

agreed to cooperate if his wife and children were to leave the country. He was instructed to contact his travel agent and his wife to arrange for her travel to Colombia. After his wife and children left, his captors had free access to his home, as they also knew his alarm code and the combination to his safe. During the next four weeks, Lugo systematically looted all of Schiller's property, eventually appropriating over $1.2 million in assets. Schiller never saw or spoke with Mese. In fact, he had never seen Mese in his life until after Mese's arrest. The evidence at trial was that Mese notarized the documents Schiller had signed, by forging signatures, and then laundered the money obtained from Schiller's assets.

When his captors were satisfied that they no longer needed Schiller, they attempted to murder him by making it appear he was killed in a car accident. After forcing Schiller to drink from a bottle of liquor, Lugo drove the car into a pole and Lugo and Doorbal poured gasoline on the car, then set it on fire. As they started to drive away in another car, they noticed that Schiller had gotten out of his car, so they ran him over twice and left him for dead.

Schiller survived and, still in fear for his life, had himself transferred by air ambulance to New York. He went into hiding without contacting the police, but hired investigators to help regain his property. The investigator followed the paper trail to Mese, who denied knowing Schiller when contacted. When the investigator confronted Mese with the documents he had notarized, Mese agreed to set up a meeting with Lugo and Delgado. After taking the investigator to Delgado's office, Mese left. The investigator told Delgado that unless Schiller's money and property was returned, Schiller would report the incident to the police, but would otherwise not press charges.

After months of unsuccessful negotiations, Schiller decided in April 1995 to report the crime to the police, but after meeting with an investigative officer, Schiller concluded that the police did not believe him and again left the country. It was not until late May 1995 that Schiller was contacted by his investigator and told that there had been a crime similar to the crimes against him and that the police wanted him to return to Miami and give a statement.

The evidence thus shows that the facts of the Schiller kidnaping, extortion and attempted murder are so incredible that it was only after the police learned of the Griga/Furton murders that they began investigating the Schiller incident. Yet the State contends that Mese was supposed to have figured the whole thing out when he was given several documents to notarize.

Therefore, I believe that even as to the Schiller crimes, the evidence showed that Mese was guilty of notary fraud and money laundering, but not attempted murder and kidnaping.

3. Severance

Because joinder of the defendants was predicated on the RICO conspiracy count, Mese should have been allowed to sever his trial pursuant to Florida Rule of Criminal Procedure 3.152(b)(3). The transcript of the trial amounted to 15,273 pages. The evidence pertinent to Mese would be less than 100 pages. While evidence of these atrocious crimes was arguably properly admitted against Lugo and Doorbal who were sentenced to death, in my view, it made a dispassionate evaluation of the evidence

against Mese impossible. I would thus grant Mese a new trial on that basis.

The purpose of rule 3.152 is to assure the fair determination of each defendant's guilt or innocence. *See McCray v. State,* 416 So. 2d 804, 806 (Fla. 1982). "Severance is not necessary, however, 'when all the relevant evidence regarding the criminal offense is presented in such a manner that the jury can distinguish the evidence relating to each defendant's acts, conduct, and statements, and can then apply the law intelligently and without confusion to determine the individual defendant's guilt or innocence.'" *Coleman v. State,* 610 So. 2d 1283, 1285 (Fla. 1992). Severance need not be granted simply because there is evidence of guilt applicable to only one of multiple defendants. *See, e.g., Johnson v. State,* 720 So. 2d 232, 236 (Fla. 1998). "The granting or denying of a motion for severance lies within the sound discretion of the trial judge. A denial of a motion for severance constitutes an abuse of discretion only if the defendant can demonstrate that he was injured by having a joint trial." *Daniels v. State,* 634 So. 2d 187, 192 (Fla. 3d DCA 1994) (citations omitted).

In this case, the evidence presented against Mese's co-defendants pertaining to the Schiller and the Griga/Furton murders was highly prejudicial to Mese. The majority of the evidence in this lengthy trial was directed at crimes the co-defendants committed. The State opened and closed its case with the crimes against Griga and Furton, and forty-seven witnesses testified concerning those murders. The evidence showed that Doorbal and Lugo had lured Griga and Furton to Doorbal's apartment; Griga was strangled and Furton was tortured before she was murdered; the bodies of Griga and Furton were dismembered

before they were stuffed into oil drums and dumped in the Everglades; and Griga and Furton's severed heads and hands were burned in an effort to disguise their identities. Additionally, graphic photos of the bodies were displayed to the jury. It is ludicrous to think that the evidence of these horrific acts, coupled with the graphic photos, did not obliterate Mese's right to a fair trial.

4. Expert Opinion

Mese is also entitled to a new trial because the State's expert witness was improperly allowed to advise the jury on how to decide the case. *See Schneer v. Allstate Indem. Co.*, 767 So.2d 485, 488 (Fla. 3d DCA 2000). Mese was charged with six counts of money laundering. The State called Christopher McFarland as an expert to explain the financial transactions Mese was involved in. McFarland testified that certain transactions were completed in order to conceal the source of the funds, and that Mese laundered money. When McFarland was asked how he could testify that Mese had knowledge of any account activity since Mese was not a signatory, he replied:

> [I]n my opinion, you know, he's a very clever CPA which basically had two partners that were not as clever as he, which was Doorbal and Lugo and he made sure his name was not there.
>
> . . .
>
> That's why he ended up in my opinion profiting to the extent of the 1.26 million dollar[s] because, you know this is clearly a plan that was well designed. Well thought out and you know, it takes a very witty an[d] knowledgeable individual such as you know somebody who has a lot of years in accounting, banking and financial experience

> and I attribute that here to being John Carl Mese, as the master mind behind this entire laundering scheme of 1.2 million dollars.

Although expert testimony is not objectionable because it includes an opinion on the ultimate issue to be decided by the trier of fact, *see* section 90.703, Florida Statutes (2000), McFarland went far beyond merely assisting the jury by providing evidence from which they could determine whether Mese laundered money.

5. Conclusion

I would therefore affirm the trial court's order setting aside the jury's verdict on the RICO conspiracy counts and reverse for a new trial on the remaining counts.

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA.

DIVISION

☒ CRIMINAL	JUDGMENT	CASE NUMBER
☐ TRAFFIC	OF	95-17381-F
☐ OTHER	ACQUITTAL	

THE STATE OF FLORIDA VS. JOHN CARL MESE

PLAINTIFF DEFENDANT

(Filed Aug. 24, 1998)

IT APPEARING UNTO THE COURT that you, JOHN CARL MESE have been found

NOT GUILTY by:

☐ Verdict of a jury

☒ The Court sitting without a jury – (NOT WITHSTANDING VERDICT)

of the offense(s) of CONSPIRACY TO COMMIT RACKETEERING/RICO; COUNT 1, RACKETEERING/RICO; COUNT 2, FIRST DEGREE MURDER; COUNTS 3 & 4, KIDNAPPING; COUNTS 5 & 6, ATTEMPTED EXTORTION; COUNT 8, AND CONSPIRACY TO COMMIT A FIRST DEGREE FELONY; COUNT 46, AS SET FORTH IN COUNTS 1, 2, 3, 4, 5, 6, 8 & 46 OF THE INDICTMENT.

IT IS THEREFORE ORDERED AND ADJUDGED that you stand acquitted of the offense(s) as set forth above and

IT IS FURTHER ORDERED AND ADJUDGED that you are hereby discharged in the above-styled cause and your sureties exonerated.

DONE and ordered at Miami, Florida this 20th day of JULY, 1998.

/s/ [Illegible]
JUDGE
ALEX E. FERRER

Supreme Court of Florida

TUESDAY, JUNE 3, 2003

CASE NO.: SC02-2236

Lower Tribunal Nos.: 3D98-2410, 3D99-921

JOHN CARL MESE vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d).

ANSTEAD, C.J., and WELLS, LEWIS and BELL, JJ., concur.
PARIENTE, J., dissents.

A True Copy
Test:

/s/ Thomas D. Hall (SEAL)
Thomas D. Hall
Clerk, Supreme Court

bh
Served:

MARCIA J. SILVERS
MICHAEL J. NEIMAND
HON. ALEX FERRER, JUDGE
HON. MARY CAY BLANKS, CLERK
HON. HARVEY RUVIN, CLERK

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002
SEPTEMBER 4, 2002

JOHN CARL MESE,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s).

CASE NO.: 3D99-921
CONSOLIDATED: 3D98-2410
LOWER TRIBUNAL NO. 95-17381

Upon consideration, appellant's motion for rehearing is hereby denied. GREEN and SHEVIN, JJ., concur. RAMIREZ, J., would grant.

Upon consideration, appellant's motion for certification of question of great public importance is denied. GREEN, SHEVIN and RAMIREZ, JJ., concur.

Appellant's motion for rehearing en banc is denied.

A True Copy
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(SEAL)
Clerk District Court of
Appeals Third District

cc:
Michael J. Neimand
Marcia J. Silvers